

405 KAR 3:040. Operations affecting two (2) acres or less.

RELATES TO: KRS 350.151

STATUTORY AUTHORITY: KRS 350.151

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.151 requires the Environmental and Public Protection Cabinet to adopt rules and administrative regulations for the surface effects of underground coal mining. This administrative regulation sets forth requirements for surface operations of underground coal mining which affect two (2) acres or less.

Section 1. Definitions. The definitions of terms as stated in 405 KAR 3:040 shall apply with respect to this administrative regulation except as otherwise specifically stated in this administrative regulation or except as otherwise clearly indicated by the context of use of such terms in this administrative regulation.

Section 2. General Provisions. (1) Applicability.

(a) This administrative regulation shall apply to surface operations of underground coal mining which would affect two (2) acres or less, including surface excavations, disposal areas, access and haul roads, and other surface operations and facilities directly associated with the mining operation which are located contiguous to or in the immediate vicinity of the mining operation.

(b) This administrative regulation shall not apply when the cabinet finds that it is being employed by an operator in successive operations for the purpose of mining a single deposit of coal on excess of two (2) acres with the intent of avoiding performance standards not enforceable under this administrative regulation.

(c) The provisions of this administrative regulation shall apply only to surface operations for underground coal mining for which permits are issued on or after May 3, 1978.

(2) General Obligations. The obligations imposed upon all operators by 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g), and the reporting requirements of 405 KAR 3:020, Section 6(1) and (3), shall apply with respect to this administrative regulation.

Section 3. Permit Requirements. The provisions of 405 KAR 3:050 shall apply with respect to this administrative regulation, except:

- (1) 405 KAR 3:050, Section 4(5), with regard to transportation plan;
- (2) 405 KAR 3:050, Section 4(6), with regard to topsoil handling;
- (3) 405 KAR 3:050, Section 4(10)(b), with regard to water quality standards and surface water monitoring; and
- (4) 405 KAR 3:050, Section 4(11), with regard to groundwater.

Section 4. Environmental Protection Performance Standards. The environmental protection performance standards set forth in this chapter in administrative regulations 405 KAR 3:070 to 405 KAR 3:190, inclusive, shall apply with respect to this administrative regulation except:

(1) Water quality standards and surface water monitoring.

(a) The provisions of 405 KAR 3:140 shall not apply except with respect to discharges of water from underground workings.

(b) The cabinet may require that the permittee monitor the quality of water discharges from the permit area in a manner prescribed by the cabinet and submit to this cabinet such monitoring reports as the cabinet may require. The parameters to be monitored may include total iron, total manganese, total suspended solids, and pH.

(2) Groundwater. The provisions of 405 KAR 3:150 shall not apply with respect to this administrative regulation.

(3) Sediment control measures. The provisions of 405 KAR 3:170, Section 1(2), requiring sedimentation ponds shall not apply with respect to this administrative regulation, except that the cabinet may require the construction of sedimentation ponds when necessary to prevent contribution of suspended solids to surface run-off from the permit area in excess of seventy (70) mg/l. Criteria required for design and construction of sedimentation ponds pursuant to this paragraph shall not be more stringent than criteria provided in 405 KAR 3:170.

(4) Topsoil handling. The provisions of 405 KAR 3:080, Section 1 shall not apply with respect to this administrative regulation.

Section 5. Variances. The cabinet may at its discretion waive any provision of this chapter with respect to this administrative regulation, except the provisions of 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g); 405 KAR 3:020, Section 1; 405 KAR 3:060; and 405 KAR 3:140, Section 1(2) regarding discharges of water from underground workings; upon a written finding by the cabinet that the public and the environment will in the absence of such provisions be provided adequate protection consistent with the purpose of this chapter.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 3:060 shall apply with respect to this administrative regulation. (4 Ky.R. 407; eff. 5-3-78; Am. 509; 5 Ky.R. 219; eff. 9-6-78; TAm eff. 8-9-2007.)